



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2019-0085]**

**Hours of Service of Drivers: National Waste & Recycling Association; Application for Exemption**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of Final Disposition.

**SUMMARY:** FMCSA announces its decision to grant the National Waste & Recycling Association's (NWRA) request for exemption from the requirement that short-haul drivers utilizing the records of duty status (RODS) exception return to their normal work-reporting location within 12 hours after coming on duty. The exemption enables all NWRA members' short-haul commercial motor vehicle (CMV) drivers in the waste and recycling industry to return to their work-reporting location within 14 hours (instead of the current 12 hours) without losing their short-haul status. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

**DATES:** This exemption is effective [INSERT DATE OF PUBLICATION OF FEDERAL REGISTER NOTICE] through [INSERT DATE 5 YEARS AFTER PUBLICATION DATE OF THIS FEDERAL REGISTER NOTICE].

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366-2722; E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation**

#### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to [www.regulations.gov](http://www.regulations.gov) and insert the docket number, FMCSA-2019-0085 in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

### **II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency’s decision must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if

granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must specify the effective period (up to 5 years) and explain its terms and conditions. The exemption may be renewed (49 CFR 381.300(b)).

### **III. Request for Exemption**

Under FMCSA's current hours-of-service (HOS) rules, drivers are not required to prepare and maintain records of duty status (RODS) provided that (among other things) they return to their normal work reporting location and are released from work within 12 hours after coming on duty (49 CFR 395.1(e)(1)). A driver who exceeds the 12-hour limit loses the short-haul exception and must immediately prepare RODS for the entire day, often by means of an electronic logging device (ELD) (49 CFR 395.8(a)(1)(i)).

NWRA represents approximately 700 publicly traded and privately-owned local, regional, national and international waste and recycling companies. These motor carriers operate more than 100,000 waste and recycling collection trucks and employ an even greater number of commercial motor vehicle (CMV) drivers. Its drivers routinely qualify for the short-haul HOS exception in 49 CFR 395.1(e)(1); however, on occasion, these drivers cannot complete their duty day within 12 hours. The drivers may exceed the 12-consecutive hour limitation of the short-haul exception more than 8 times in any 30-day period due to operating restrictions placed upon the industry by States and localities, inclement weather, traffic congestion, and other circumstances beyond their control. Once they exceed the 8-in-30-day threshold, NWRA member companies must install electronic logging devices (ELDs) to document driver's duty status (49 CFR

395.8(a)(1)(iii)(A)(1)). Therefore, NWRA's application for a 14-hour day would help some of its member carriers to avoid the economic burden of installing ELD's when their drivers occasionally exceed the 8-in-30-day threshold for the ELD mandate.

NWRA notes that drivers in the asphalt-paving business were granted a similar exemption [83 FR 3864, Jan. 26, 2018], and that 49 CFR 395.1(e)(1)(ii)(B) reflects a statutory exemption for the ready-mixed concrete industry. NWRA further notes that FMCSA recently granted one of its member companies, Waste Management Holdings, Inc., a similar exemption [83 FR 53940, Oct. 25, 2018]. NWRA argues that granting a broader exemption would create regulatory consistency across the entire waste and recycling industry.

NWRA asserts that waste and recycling carriers have virtually no record of HOS violations in the Agency's Compliance, Safety, Accountability (CSA) Safety Measurement System (SMS), nor is there a history of CSA interventions for HOS non-compliance by these carriers. NWRA adds that there is no equivalent or greater level of safety that ELDs would bring to the waste and recycling industry.

NWRA's application for exemption is available for review in the docket referenced at the beginning of the notice.

#### **IV. Public Comments**

On March 29, 2019, FMCSA published notice of this application and requested public comment (84 FR 12019). The Agency received 13 comments,<sup>12</sup> supporting the application. Seven of these comments were filed by waste and recycling-related companies: Republic Services; Waste Connections; Rumpke Waste and Recycling;

Kimble Recycling and Disposal; Waste Management; Texas Disposal Systems; and the National Demolition Association. Five individuals also supported the exemption request. One individual opposed the application.

The primary reasons cited for supporting the NWRA request include the following: 1) the HOS of waste and recycling drivers are impacted by factors outside their control, which means the driver cannot always return to the work reporting location within the allotted 12 hours; 2) requiring waste and recycling drivers to log their HOS on an ELD causes driver distraction; and 3) granting NWRA's application for exemption is consistent with a number of the Agency's prior exemptions, including those issued to the National Asphalt Pavement Association and Waste Management, Inc.

Regarding the first reason given in support of the exemption, commenters noted that drivers may exceed the 12-hours on-duty limitation under the short-haul exemption more than eight times in any 30-day period due to operating restrictions placed upon the industry by the State, localities, inclement weather, traffic congestion, and other circumstances beyond their control. With regard to the second reason, commenters believe that, from a safety perspective, the following burdens and risks are a concern, particularly for residential, short-haul drivers: an ELD device which requires interaction by the driver making frequent duty-status changes, as the trucks stop to pick up waste, would cause significant distractions; and maneuvering through residential areas, parking lots, among parked cars, pedestrians, and other motorists of all types requires the constant, undivided attention of drivers, both for their own safety and for that of the general public.

Commenters further argued that granting a broader exemption to NWRA member companies – based on prior FMCSA exemptions on this same issue – would create regulatory consistency across the entire waste and recycling industry. One individual commenter opposed the application, stating that the Agency should stop granting exemptions like the one requested by NWRA.

## **V. FMCSA Response to Comments**

The Agency agrees with the commenters who support the application because the exemption would not allow additional driving time during the work shift or allow driving after the 14th hour from the beginning of the work shift. In addition, drivers would remain limited by the weekly 60- or 70-hour limits and the employer must maintain accurate time records concerning the time the driver reports for work each day, the total number of hours the driver is on duty each day, and the time the driver is released from duty each day. The exemption would provide limited relief from the recordkeeping requirements for HOS for short-haul drivers who find it necessary to exceed the 12-hour limit, which impacts the type of HOS records required. The Agency has granted similar exemptions to the National Asphalt Paving Association [January 26, 2018, (83 FR 3864)], the Motion Picture Association of America [January 19, 2018, (83 FR 2869)], and Waste Management Holdings, Inc. [October 25, 2018 83 FR 53940].

## **VI. FMCSA Decision**

FMCSA has evaluated NWRA's application and the public comments and determined that it is appropriate to grant the request. Because the exemption would extend neither the 11-hour driving time allowed during the work shift nor the 14-hour driving window applicable to all other truck drivers, there is no reason to believe that the

safety performance of these drivers would be compromised. Drivers would continue to return to the normal work-reporting location at the end of each work shift and continue to comply with the weekly HOS limits. Therefore, the Agency believes that the exempted drivers will likely achieve a level of safety that is equivalent to or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)]. The exemption will allow drivers for NWRA's member companies to use the short-haul RODS exception, but with a 14-hour duty period instead of 12 hours.

The FMCSA emphasizes that absent the exemption, these drivers could take advantage of the current exemption that allows driver up to eight days within a 30-consecutive day period to operate beyond the short-haul limits without incurring the costs of using ELDs. Through this exemption, motor carriers and drivers will have additional flexibility to address situations when drivers operate beyond the 12-hour short-haul limit for more than 8 days during a 30-day period.

## **VII. Terms and Conditions for the Exemption**

- Drivers for member companies of the National Waste & Recycling Association must have a copy of this notice or equivalent signed FMCSA exemption document in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.
- Drivers for NWRA member companies must return to the work reporting location and be released from work within 14 consecutive hours.

- NWRA member companies must maintain accurate time records concerning the time the driver reports for work each day, the total number of hours the driver is on duty each day, and, the time the driver is released from duty each day.

#### Extent of the Exemption

This exemption is limited to the provisions of 49 CFR 395.1(e)(1)(ii) and is available only to drivers for companies that are members of NWRA. These drivers must comply with all other applicable provisions of the FMCSRs.

#### Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

#### Notification to FMCSA

Any NWRA member company utilizing this exemption must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must include the following information:

- (a) Identity of the exemption: "National Waste & Recycling Association;"
- (b) Name of operating motor carrier;
- (c) Date of the accident;
- (d) City or town, and State, in which the accident occurred, or closest to the accident scene;
- (e) Driver's name and license number;
- (f) Vehicle number and State license number;



- (g) Number of individuals suffering physical injury;
- (h) Number of fatalities;
- (i) The police-reported cause of the accident;
- (j) Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations; and
- (k) The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be emailed to [MCPSD@DOT.GOV](mailto:MCPSD@DOT.GOV).

#### **TERMINATION**

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record.

Interested parties or organizations possessing information that would otherwise show that any or all of these motor carriers are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any information submitted and, if safety is being compromised or if the continuation of this exemption is inconsistent with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA will immediately take steps to revoke the exemption of the company and drivers in question.

Issued on: November 15, 2019

---

Jim Mullen  
Deputy Administrator

[FR Doc. 2019-25335 Filed: 11/20/2019 8:45 am; Publication Date: 11/21/2019]